
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2011 No.

**The Crofting Commission (Elections)
(Scotland) Regulations 2011**

PART V

OFFENCES

Personation

55.—(1) A person commits an offence if he or she commits, or aids, abets, counsels or procures the commission of, the offence of personation.

(2) A person commits the offence of personation if he or she—

- (a) votes by post as some other person, whether as an elector or as proxy and whether that other person is living or dead or is a fictitious person; or
- (b) votes by post as proxy—
 - (i) for a person whom he or she knows or has reasonable grounds for supposing to be dead or to be a fictitious person; or
 - (ii) when he or she knows or has reasonable grounds for supposing that his or her appointment as proxy is no longer in force.

(3) For the purposes of this regulation, a person who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, is deemed to have voted.

Other voting offences

56.—(1) A person commits an offence if —

- (a) he or she votes by post, whether as an elector or as proxy, or applies to vote by proxy or by post as elector, at an election knowing that he or she is subject to a legal incapacity to vote at the election;
- (b) he or she applies for the appointment of a proxy to vote for him or her at an election knowing that he or she or the person appointed is subject to a legal incapacity to vote at the election;
- (c) he or she votes by post as proxy for some other person at an election knowing that that person is subject to a legal incapacity to vote at the election; or
- (d) he or she votes as an elector by virtue of regulation 4(2)(a), without agreement as mentioned in regulation 4(3).

(2) For the purposes of this regulation references to a person being subject to a legal incapacity to vote do not, in relation to things done before the day of the count at or for which they are done, include his or her being below voting age if he or she will be of voting age on that day.

(3) A person commits an offence if he or she votes as elector otherwise than by proxy—

- (a) more than once in any election;

- (b) in more than one election occurring at the same time; or
 - (c) at an election when there is in force an appointment of a person to vote as his or her proxy in that election.
- (4) A person commits an offence if he or she votes at an election as proxy for more than 2 persons.
- (5) A person commits an offence if he or she knowingly induces or procures some other person to do an act which is, or but for that other person's want of knowledge would be, an offence by that other person under paragraphs (1) to (4).

Offences relating to applications for absent and proxy votes

- 57.**—(1) A person commits an offence if he or she—
- (a) engages in an act specified in paragraph (2) at an election; and
 - (b) intends, by doing so, to deprive another of an opportunity to vote or to make for himself or herself or another a gain of a vote to which he or she or the other is not otherwise entitled or a gain of money or property.
- (2) These acts are—
- (a) applying for an absent or proxy vote as some other person (whether that other person is living or dead or is a fictitious person);
 - (b) otherwise making a false statement in, or in connection with, an application for an absent or proxy vote;
 - (c) inducing the registration officer or returning officer to send a postal ballot paper or any communication relating to an absent or proxy vote to an address which has not been agreed to by the elector;
 - (d) causing a communication relating to an absent or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient.
- (3) A person who aids, abets, counsels or procures the commission of an offence under paragraph (1) commits an offence.

Breach of official duty

58.—(1) If a person to whom this regulation applies is in breach of his or her official duty under these Regulations, without reasonable cause, that person commits an offence and he or she is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) No person to whom this regulation applies is liable to any penalty at common law for breach of his or her official duty under these Regulations and no action for damages lies in respect of the breach by such a person of his or her official duty under these Regulations.

- (3) The persons to whom this regulation applies are—
- (a) the registration officer;
 - (b) the returning officer;
 - (c) any other person whose duty it is to be responsible after an election for the used ballot papers and other documents (including returns and declarations as to expenses);
 - (d) any official designated by a universal postal service provider or a commercial delivery firm; and
 - (e) any deputy of a person mentioned in any of paragraphs (a) to (c) or any person appointed to assist or in the course of his or her employment assisting a person so mentioned in connection with his or her official duty;

and “official duty”, for the purposes of this regulation, is construed accordingly.

Tampering with nomination papers, ballot papers etc.

59.—(1) A person commits an offence, if, at an election, he or she—

- (a) intentionally defaces or destroys any nomination paper;
- (b) intentionally defaces or destroys any ballot paper or official envelope used in connection with voting by post;
- (c) without due authority supplies any ballot paper to any person;
- (d) without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election; or
- (e) intentionally or without due authority, as the case may be, attempts to do any of the acts mentioned in sub-paragraphs (a) to (d).

(2) If a returning officer or a member of his or her staff attending at the counting of the votes commits an offence under this regulation, he or she is liable—

- (a) on conviction on indictment to a fine, or to imprisonment for a term not exceeding 2 years, or to both;
- (b) on summary conviction, to a fine not exceeding the statutory maximum, or to imprisonment for a term not exceeding 12 months, or to both.

(3) If any other person commits an offence under this regulation, he or she is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 6 months, or to both.

Elections: false information in nomination papers etc.

60.—(1) A person commits an offence if he or she causes or permits to be included in a document delivered or otherwise furnished to the returning officer for use in connection with the election—

- (a) a statement of the name or home address of a candidate at the election which he or she knows to be false in any particular; or
- (b) anything which purports to be the signature of an elector who nominates such a candidate but which he or she knows—
 - (i) was not written by the elector by whom it purports to have been written; or
 - (ii) if written by that elector, was not written by the elector for the purpose of nominating that candidate.

(2) A person commits an offence if he or she makes in any document in which that person gives consent to his or her nomination as a candidate at the election a statement which that person knows to be false in any particular as to—

- (a) his or her date of birth; or
- (b) his or her qualification for being elected at the election.

(3) For the purposes of paragraph (2), a statement as to a candidate's qualification is a statement—

- (a) that he or she is qualified for being elected;
- (b) that he or she will be qualified for being elected; or
- (c) that to the best of his or her knowledge and belief he or she is not disqualified for being elected.

Requirement of secrecy

61.—(1) The returning officer and his or her staff attending at the counting of the votes and every candidate and his or her spouse or civil partner, counting agent and persons permitted to attend

under regulation 40(2), so attending, must maintain and aid in maintaining the secrecy of voting and must not, except for some purpose authorised by law, communicate to any person before the count is completed any information as to—

- (a) the name of any elector who has or has not applied for a ballot paper or voted; or
- (b) the number on the crofting electoral register of any elector who has or has not applied for a ballot paper or voted.

(2) Every person attending at the counting of the votes must maintain and aid in maintaining the secrecy of voting and must not—

- (a) ascertain or attempt to ascertain at the counting of the votes the number on the back on any ballot paper; or
- (b) communicate any information obtained at the counting of the votes as to how any particular ballot paper has been marked.

(3) Every person involved in the issue or the receipt of ballot papers must maintain and aid in maintaining the secrecy of the voting and must not—

- (a) except for some purpose authorised by law, communicate to any person at any time any information obtained by that involvement as to the unique identifying number on the ballot paper sent to any person;
- (b) except for some purpose authorised by law, attempt to ascertain in connection with the receipt of ballot papers, the unique identifying number on any ballot paper; or
- (c) attempt to ascertain in connection with the receipt of the ballot papers how any particular ballot paper has been marked or communicate any information with respect to that matter.

(4) A person having undertaken to assist an elector because of that elector's disability to vote must not communicate at any time to any person any information as to how that elector intends to vote or has voted, or as to the number on the back of the ballot paper given for the use of that elector.

(5) A person commits an offence if he or she does not comply with any of the requirements in paragraphs (1) to (4).

Penalties

62. A person who has committed an offence under regulation 55, 56, 57, 60 or 61 is liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding 12 months.